

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CYRUS,	:	
	:	
Plaintiff,	:	No. 4:CV-08-2278
	:	
v.	:	(McClure, J.)
	:	
P.A. PARAMEDIC J.W. FREYNIK	:	(Blewitt, M.J.)
	:	
Defendant	:	
	:	

M E M O R A N D U M

August 24, 2009

BACKGROUND:

On December 22, 2008, plaintiff John Cyrus, a federal prisoner filing pro se, commenced this Bivens¹ civil rights action under 28 U.S.C. § 1331, claiming that defendant J.W. Freynik, a physician's assistant, denied him medical care in violation of the Eighth Amendment for injuries allegedly sustained during an assault by four (4) correctional officers at a North Carolina airport in January 2008. (Rec. Doc. No. 1). Plaintiff alleges that defendant denied him medical care upon his arrival at FCI-Allenwood in order to retaliate against plaintiff for filing a

¹Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

lawsuit against defendant in this District.²

The matter was initially referred to United States Magistrate Judge Blewitt.

On May 19, 2009, defendant filed a motion for summary judgment against plaintiff's claim. (Rec. Doc. No. 14). Defendant filed a supporting brief, (Rec. Doc. No. 15), and statement of material facts on June 3, 2009. (Rec. Doc. No. 16).

On June 25, 2009, as a result of plaintiff's failure to timely file an opposition brief, the Court issued an Order granting plaintiff additional time, until July 13, 2009, to file his brief. (Rec. Doc. No. 17). The July 25, 2009 Order also advised plaintiff that failure to timely file an opposing brief would result in a recommendation that defendant's motion be deemed unopposed in accordance with L.R. 7.6.

On July 22, 2009, Magistrate Judge Blewitt filed a thirteen-page (13) report and recommendation. (Rec. Doc. No. 18). In his report, the magistrate judge concluded that: (1) defendant's motion should be deemed unopposed because plaintiff failed to file an opposition brief or request an extension of time to file the same; and, (2) defendant's motion for summary judgment should be granted because plaintiff failed to exhaust his Bureau of Prisons administrative remedies as

²The complaint in question was docketed as Civil No. 06-2051. The Court dismissed this case on June 27, 2007.

required by law.³

Plaintiff has not filed any objections to the magistrate judge's report and recommendation, and the time for doing so has since passed. Because plaintiff has elected not to object to the report and recommendation and because we agree with the magistrate judge's thorough analysis and recommendation, we will adopt the report and recommendation in full. For the purposes of judicial economy, we will not rehash the sound reasoning employed by the magistrate judge. Therefore, we will grant defendant's motion for summary judgment.

s/ James F. McClure, Jr.

James F. McClure, Jr.
United States District Judge

³“No action shall be brought with respect to prison conditions under section 1983 of this title, or any other federal law, by a prisoner confined in any jail, prison or other correctional facility, until such administrative remedies as are available are exhausted.” 42 U.S.C. §1997e(a).

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: Defendant :
:

O R D E R

August 24, 2009

For the reasons set forth in the accompanying Memorandum,

IT IS HEREBY ORDERED THAT:

1. United States Magistrate J. Blewitt's Report and Recommendation is ADOPTED IN FULL. (Rec. Doc. No. 18).
2. Defendant's motion for summary judgment is deemed unopposed. (Rec. Doc. No. 14).
3. Defendant's motion for summary judgment is GRANTED. (Rec. Doc. No. 14).
4. Final judgment is entered in favor of defendant and against plaintiff.
5. The clerk is directed to close the case file.

6. Any appeal from this order is not taken in good faith.

s/ James F. McClure, Jr.

James F. McClure, Jr.

United States District Judge